IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8895 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBARDI SEVA SAHAKARI MANDALI LTD & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :
MS BELA A PRAJAPATI for the Petitioners.
Mr. H.D.Dave, Assistant GOVERNMENT PLEADER for Respondent nos. 1, 2 3 and 6.
MR HARIN P RAVAL for Respondent(s) : 4.
MR PS CHAMPANERI for Respondent(s) : 5.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 24/10/2005

ORAL JUDGMENT

By way of the present petition, the petitioners challenge by-law 29 of Amreli District Co-operative Purchase and Sale Union Ltd., a co-operative society registered under Gujarat Co-operative Societies' Act, 1961.

2. The learned advocate for the petitioners submitted that by-law 29 of respondent no. 4 which permits a member to be co-opted upon death of the member of the Managing Committee of respondent no. 4 which runs counter to the provisions of the Act of 1961, especially section 74-C to be read with Rule 73 of the Gujarat Specified Co-operative Societies Election to Committees Rules, 1982. As per section 74-C of the Act of 1961, in case of death of a member of Managing Committee, the election of candidate is necessary by the general body of the members of the society. Similar is the provision under Rules and therefore, by-law 29 of respondent no. 4 society is against the statute and the Rules and therefore, it deserves to be quashed and set aside.

3. The learned advocate for the petitioners has relied upon the decision rendered by this Court in the case of **Antakampa Milk Producers' Co.op. Society Ltd. vs.**

Sabarkantha Dist.Co-op. Milk Producers' Union Ltd. in 2004(1) GLR, 310. In view of the aforesaid decision also, by-law 29, (as it was in existence on the date of co-option of respondent no. 5) of the respondent no. 4 society deserves to be quashed and set aside and thereby, the appointment of respondent no. 5 as a co-opted member of the Managing Committee of respondent no. 4 society also deserves to be quashed and set aside.

4. I have heard the learned Assistant Government Pleader for respondent nos. 1,2, 3 and 6 who has also submitted that as per by-law 29 (which was in existence at the relevant time of appointment of respondent no. 5) is against the provisions of section 74-C to be read with Rule 73 of the Rules, 1982. In case of death of member of Managing Committee of the specified society, the vacancy ought to have been filled up by election and not co-option. The respondent no. 5 could not have been co-opted in the Managing Committee of respondent no. 4, in view of the provisions of section 74-C read with Rule 73 of the Rules,1982.

5. I have also heard the learned advocate for the respondent no. 5 who has submitted that the action of

respondent no. 4 is absolutely in accordance with law. The functions of respondent no. 4 are being carried out as per its own by-laws. The action of respondent no. 4 is within four corners of by-laws and therefore, the appointment of respondent no. 5 may not be quashed and set aside by this Court.

6. Looking to the facts and circumstances of the case and the provisions of the Act of 1961 and the Rules of 1982, and looking to the by-law no.29 of respondent no. 4 co-operative society (as it was then in existence at the relevant date), I hereby quash and set aside by-law 29 for the following facts and reasons.

(i)As per section 74-C of the Gujarat Co-operative Societies' Act, 1961, the constitution of Managing Committee must be by members who have been elected by general body of the co-operative society. Sub-section (3) of section 74 of the Act of 1961 reads as under:

" 74C. Provision for conduct of elections of committees and officers of certain societies and term of office of members of committee:-

1. xxx xxx xxx

2. xxx xxx xxx

3. Notwithstanding anything in the bye-laws of any such society, the committee of management shall be elected by a general body of members of the society and all other committees authorised by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management, and all such committees shall be sub-committees of the committees of management, and shall be subordinate to it:

Provided that it shall be lawful for the State Government

(a) to nominate its representative on a Committee of any such society under section 80, or

(b) to nominate the first Committee of Management of any such society where the bye-laws of such society so provided

(provided further that it shall be lawful for anybody or authority to nominate its representative on a Committee of such society where the bye-laws of such society so

provide.)”

In view of the aforesaid provisions, the Committee members of the respondent co-operative society ought to have been elected and there is no scope for appointment of co-opted members or nomination of members without holding election, in view of the facts of the present case.

(ii)As per Rule 73 of the Specified Co-operative Societies Election to Committees Rules, 1982, in case any vacancy occurs on account of death of a member of the society, election ought to have been held by the Collector and the vacancy can be filled up. Rule 73 of The Gujarat Specified Co-operative Societies Election to Committees Rules, 1982 reads as under:

“73. Casual vacancies how to be filled in: In the event of a vacancy occurring on account of death, resignation, disqualification or removal of a member of a society or through such a member becoming incapable of acting previous to the expiry of his term of office or otherwise, the Chairman of the Society

> shall forthwith communicate the occurrence to the Registrar (in the case of Societies falling under Section 74-C(1)(i) and to the District Registrar, in case of other Societies), and the vacancy shall be filled as soon as conveniently, by holding bye-election, to fill the seat, and the provisions of these Rules shall thereupon mutatis mutadis apply accordingly. The person so elected shall hold office so long only as the member of the Committee in whose place he is elected would have held it, if the vacancy had not occurred: Provided that, if the vacancy occurs, within six months, preceding the date on which the term of the committee expires, the vacancy shall to be filled."

In view of the aforesaid provisions also, looking to the facts of the present case, the respondent no. 5 cannot be co-opted by the committee members of the respondent no. 4.

> (iii) If there is any by-law of respondent no. 4 against statutory provisions of the Act or Rules of 1982, such bye-law cannot be made

operative in view of the decision rendered by this Court in the case of **Anatakampa Milk Producers' Co-operative Society Ltd. vs. Sabarkantha District Co-operative Milk Producers' Union Ltd. reported in 2004(1) GLR, 310, paragraphs 7, 8 and 9** whereof read as under:

“7. If the provisions of Bye-law 35(1)(A) are considered keeping in view the provisions of Section 74C(3) it transpires that the provisions under the Bye-laws for accommodation of three women representatives comes in direct conflict with section 74C(3) of the Act inasmuch as section 74C(3) provides that “Notwithstanding anything in the Bye-laws of any such Society, the committee of management shall be elected by a general body of members of the Society and all other committees authorised by or under the Bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management and all such committees shall be sub-committees of the committee of management and shall be subordinate to it.”

On the plain reading of section 74C(3) it transpires that (i) it will have overriding effect on any other Bye-laws of any such Society, (ii) it also provides that the committee of the management shall be elected by general body of the members of the Society (iii) it also provides that all committees authorised by or under the Bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management. The language used by the legislature for "electing or appointing" is express in the provision to said sub-section wherein the legislature has provided power with the State Government to nominate its representative on a committee under Section 80 or to nominate the first committee of management of any such Society where the Bye-laws so provide.

8. Mr. Mehta learned advocate appearing for respondent no.1 made an attempt to submit that the provisions of sub-section (3) means and provides for election of only those members who are required to be elected and it

does not provide that there cannot be any co-option. He further submitted that the purpose or provision of co-option is not unknown in the managing committee and for substantiating his submission he relied upon the provisions of section 74B of the Act. The said contention is misconceived on the face of it inasmuch as what is provided under sub-section (3) of Section 74C is to have an overriding effect over and Bye-laws of such society and it is not having overriding effect over any other statutory provisions of the Act. Therefore, section 74B providing for co-option is not nullified but what is nullified is the provisions made under Bye-laws providing for any mode of induction of any person as member of the management committee and therefore, said contention of Mr. Mehta cannot be accepted. In my view, except the mode which is provided under sub-section (3) of electing the members of the managing committee, there cannot be any provision in the Bye-laws and even if such provision is there in the Bye-laws, it cannot nullify the effect or force of the statutory

provisions of section 74C(3) and therefore, it cannot be read that if the Bye-law provides for co-option of any person the means induction by election of those who are to be elected as m members of the managing committee as sought to be canvassed and contested by Mr. Mehta. Therefore, the only conclusion which cannot be drawn is that the provisions made under Bye-law 35(1)(A) so far as it relates to co-option of three women representatives as members of the managing committees is in contravention to statutory provisions of section 74C(3) of the Act and such Bye-laws cannot be given effect to on the face of statutory provisions, and therefore, any action pursuant to the above Bye-law 35(1)(A) cannot be said to be legal in the eye of law nor the society who is respondent no. 1 herein can be allowed to induct such persons on the basis of aforesaid part of Bye-law 35(1)(A).

9. The aforesaid take me to examine the provisions of other part of Bye-law 35(1) so far as it relates to giving representation to more than one person for each constituency.

The Rule 3A(8) which is relevant reads as under:

“3A(8) Where the area of operation of a society in more than one village, the number of constituencies will be equal to the total number of seats excluding two seats reserved under sub-section (1) of section 74B>”

Plain and simple reading of sub-rule (8) of Rule 3A shows that the number of constituencies has to be equal to the total number of seats excluding two seats reserved under sub-section (1) of Section 74B. Section 74B provides for co-option of reserved category which is not relevant in the present group of petitions. However, the language used in sub-rule (8) of Rule 3A makes it clear that as a consequence of sub-rule (8) there will be one seat for one constituency. If one constituency provides for more one seat the same would not be in conformity with the provisions of sub-rule (8). Similarly, if for each constituency the seat is provided for not more than one it may be in conformity with sub-rule (8) of Rule 3A.”

7. In view of the aforesaid judicial pronouncements also, in my view, bye-law 29 (as it was in force in August, 2003) which is at Annexure “A” to the memo of the petition deserves to be quashed and set aside. The existing bye-law as on august, 2003 is against the provisions of section 74C of the Act of 1961 read with Rule 73 of the Rules of 1982. Therefore, it is hereby quashed and set aside. Consequently, Resolution dated 25th August, 2003 passed by the respondent no. 4 at Annexure “E” to the memo of the petition is also hereby quashed and set aside. Rule made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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